IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Crl. Appeal No. 354 of 2001
Old No. 2358/1986

Date of decision :- 28-6-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 28/6/2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

Criminal Appeal No. 354 of 2001.
(Old No. 2358/1986)

Lalit Singh son of Gopal Singh, resident of village Gunthura, P.O. Pithoragarh.

..... Appellant.

Versus.

State of Uttar Pradesh.

.. Respondent.

Sr. R.S. Sammal, learned counsel for the appellant.
Sri Sudhir Kumar Chaudhary, Learned Addl. G.A. for the State.

28.06.2006.

Hon'ble J.C.S. RAWAT, J.

1. This is an appeal against the judgment and order dated 05.09.1986 passed by Sri Bhagwan Din, the then Sessions Judge, Pithoragarh in Sessions Trial No. 7 of 1986 convicting and sentencing the appellant to 5 (five) years rigorous imprisonment under section 307 IPC. The learned Sessions Judge, Pithoragarh by the same order dated 05.09.1986 had acquitted co-accused Bhupendra Singh, Kedar Singh and Lalit Singh son of Trilok Singh Under section 307 IPC read with section 34 IPC.

2. Brief facts for the disposal of this appeal are that all the accused, injured Ram Singh and Mohan Singh and the witness Narendra Singh are the residents of village Lunthura situated adjoining to the city of Pithoragarh. On 07.03.1985 being the third day of Holi Festival, injured Ram Singh came at his old house and sat in front thereof with his nephew

Madan Singh. At about 12.30 p.m. accused-appellant Lalit Singh son of Gopal Singh came there with a sword in his hand being followed by his brother accused Bhupendra Singh alias Bhuwan, accused Kedar Singh and Lalit Singh son of Trilok Singh armed with lathis. The accused-appellant Lalit Singh son of Gopal Singh told Ram Singh, the injured that he would avenge all the past long standing enmities and all of a sudden gave a blow of sword aiming at the neck of Ram Singh. Ram Singh escaped this attempt of the appellant by raising his left hand but sustained an incised injury at the left elbow joint. Madan Singh when came to rescue Ram Singh, his tau (elder uncle), accused Bhpendra Singh, Kedar Singh and Lalit Singh son of Trilok Singh assaulted him with lathis. On the cries raised by Madan Singh, witnesses Khushal Singh, Prem Singh, Mohan Singh, Narendra Singh and others reached at the place of occurrence and intervened the 'Marpeet'. Thereafter the appellant and other accused fled away from the scene of occurrence. Injured Ram Singh sustained grievance injury, hence he was immediately taken to district hospital, Pithoragarh where Dr. G.K.Sharma (PW 2), the then Medical Officer on Emergency duty, examined injured Ram Singh at 1.00 p.m. He found the following injuries on his person:

(i) Incised wound 8 cm X 4 cm wide X bone deep over dorsum of left elbow, transversely present. Separated head of ulna present drawn upwards.

(ii) Abrasion over dorsum of forearm 8 cm above wrist joint in the area of 4 cm, vertical X 3.5 cm transversely placed.

(iii) Multiple abrasions with loss of superficial skin over right side back 4 cm above pelbic bone area 16 cm X 8 cm wide vertically tapering towards lateral side.

3. The doctor found injury No.1 grievous and caused by some heavy sharp edged weapon like sword. He also found injury No.2 and 3 simple and caused by friction against hard object. The doctor opined that the injuries were fresh and might have been caused on 7.3.1985 at about 12.30 p.m.

4. Thereafter the investigation was conducted by the S.I. Shyam Singh posted in police station Pithoragarh which culminated into the submission of the charge sheet (Ext.Ka.9) against the present appellant.

5. The appellant was Charged under section 307 IPC. He denied the charge and claimed the trial.

6. The prosecution, in support of its case, has examined PW1 Dr. B.S.Bisht who has proved the X-ray report (Ext.Ka.1), PW.2 Dr. G.K.Sharma has proved the injury report (Ext.Ka.2) of injured Ram Singh, PW 3 Ram Singh in an injured witness, PW 4 Narendra Singh and PW 5 Madan Singh are the eye witnesses of the occurrence and

PW 6 S.I. Shyam Singh was the Investigating Officer of the case.

7. In the statement recorded under section 313 Cr.P.C. the appellant denied the prosecution case and stated that he has been falsely implicated in this case due to enmity.

8. After the appreciation of evidence, the Learned Sessions Judge convicted the appellant and sentenced him as indicated above. The rest of the co-accused were acquitted by the learned Sessions Judge.

9. I have heard the learned counsel for the appellant and perused the entire evidence on record.

10. It is pertinent to mention here that it is not disputed that the injured sustained the injuries on 7.3.1985. The prosecution version is that on 7.3.1985 at about 12.30 p.m. the injured was sitting in front of his house to receive the villagers coming to them for ‘Holi Milan’ and he alleged that the appellant came there with sword and assaulted him by sword and he sustained injuries. The defence has taken a case that the injured fell down on the ground and he sustained the said injuries. It is not disputed that the injured sustained injuries on 7.3.1985. This fact is also supported by the evidence of Dr. G.K. Sharma who examined Ram Singh injured on 7.3.1985 at 1.00 p.m. He found three injuries on his person as has been indicated above and he has opined

that the said injuries can be caused by sharp edged weapon on 7.3.1985 at about 12.30 p.m. Thus, it is not disputed that the injuries were on the person of the injured.

11. Now it has to be decided who was the author of the injuries on the person of the injured Ram Singh. The prosecution, in support of its case, examined the injured Ram Singh who had stated in his evidence that on 7.3.1985 at about 12.30 p.m. it being a day of 'Holi Festival Milan' the injured came to his old house and sat in front thereof with his nephew Madan Singh. It is alleged that the injured Ram Singh had constructed another residential house at the distance of about few yards in the west from this house. He further stated that the appellant Lalit Singh came there with a sword in his hand being followed by other co-accused armed with lathis. The appellant claimed that he would settle his avenge and he gave a sudden blow of sword aiming at the neck of the injured. The injured warded it off by raising his left hand consequently upon he sustained an incised injury at the left joint elbow. Meanwhile the witnesses reached at the spot and he was rescued by them. The witnesses came at the spot at the cry raised by the injured. When the witnesses reached at the spot the appellant alongwith others fled away from the scene of occurrence. He had further stated that he was taken to district hospital, Pithoragarh and he was

medically examined. The prosecution also produced PW 4 Narendra Singh in support of its version that on the date of incident he was inside his house when he heard the cry of injured Ram Singh and Madan Singh he immediately reached at the spot and he saw that appellant was armed with sword and other co-accused were having lathis on their hands. He further stated that when the cry of the injured was heard by Khushal Singh, Mohan Singh and Prem Singh they also reached at the spot immediately and the witnesses rescued the injured. The appellant fled away from the scene of occurrence. The prosecution also adduced evidence of PW 5 Madan Singh who was said to be an eye witness of the incident. The testimony of PW 5 had not been relied upon by the trial court and the trial court has held that his presence was doubtful at the spot. The trial court has also acquitted all the accused except the present appellant. The State preferred an appeal against the acquittal of the other co-accused. The said appeal was also dismissed by this court and the testimony of PW 5 was not relied upon. As such, the evidence of PW 5 can not be read against the present appellant also.

12. The learned counsel for the appellant contended that the site plan prepared by the I.O. is completely in variance with the evidence adduced by the prosecution. He has intensively relied upon the site plan prepared by the I.O.

for discarding the prosecution case and he also referred during the arguments that the I.O. had not shown the place from where the witnesses were alleged to have entered the place of incident. He further referred the site plan that the house of the injured and the appellant had not been shown in the said plan. The perusal of the site plan clearly reveals that in the site plan the house of the injured as well as the appellant had been shown by mark D. PW 6 Shyam Singh, the I.O. had categorically stated in his statement that he had shown the house of the injured at place 'D'. Thus, the contention of the learned counsel to the effect is not sustainable. The I.O. had also stated in his statement that the site plan had been prepared at the instance of the witnesses. It is obvious that the site plan was made with the help of the witnesses. It is well settle position of law that a rough sketch map was prepared by the I.O. on the basis of statement made to him by the witnesses during the course of investigation and showing the place where the injured was hit and also the places at the time of incident would not be admissible in evidence in view of the provisions of Section 162 Cr.P.C. It is in fact nothing more that the statement of Sub inspector that the eye witness told him that the injured was at such place at the time when he was hit. The sketch map could be admissible so far as it indicates all that the I.O.

saw himself at the spot out any mark put on the sketch map based on the statement made by the witnesses to the sub inspector could be inadmissible in view of the clear provision of Section 162 Cr.P.C. Even if the mark would have been shown on the back such marks on the site plan could not be used to find any argument as to improbability of the injured being hit by the appellant where he was actually injured, if he was sitting at a spot marked on this sketch map. This principle has been laid down by the Apex Court in **Dori Singh Vs State, AIR 1962 (S.C) page 399.** The same view has again been reiterated by the Apex Court in **State of Rajasthan Vs Bhawani and another, 2003 Vol 7 Supreme Court Cases 291.** Taking into account the factual metrics as stated above and the law which have been laid down as above I am of the view that the argument advanced by the learned counsel for the appellant has no force.

13. It was further contended by the learned counsel for the appellant that there is enmity in between the parties and the trial court had acquitted the other co-accused on the same evidence and the evidence against the appellant can not be relied upon. In cases of parties friction and rivalry there is a tendency on the part of the prosecution witnesses to implicate some innocent persons also alongwith guilty one. Generally in such cases the witnesses of the prosecution case

are to exaggerate the culpability on the actual assailant and to extreme participation in the occurrence to some possible innocent members of the opposite party as well. In such a case a duty has been cast upon the court to shift the evidence after a close scrutiny with proper care and caution to come to a judicial conclusion as to how out of the accused persons can be considered to have actually committed the offence.

14. The maxim *"falsus in uno falsus in omnibus"* has no application in India and the witnesses cannot be branded as liars. This maxim has not received general acceptance in India. It is merely a rule of caution in our country. The doctrine merely involved the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". If a whole body of the evidence of a particular witness was rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony

of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end.

15. Thus, while appreciating the evidence of PW 3 Ram Singh and PW 4 Narendra Singh would be appreciated in the light of the above observation it can not be discarded in toto. In view of the above, there is no force in the contention of the learned counsel for the appellant.

16. It was contended by the learned counsel for the appellant that there is enmity in between the parties. The appellant had filed a copy of the complaint filed under sections 147,323 and 504 IPC against the injured and others in the year 1970 before the Judicial Magistrate, Pithoragarh. The other document which has been filed by the defence is the complaint filed by Kedar Singh against the father of Ram Singh injured under section 504 and 506 IPC in the year 1981. The third copy of the complaint which was filed in the year 1978 by Narain Singh, father of Kedar Singh under section 107/116 Cr.P.C. in which Ram Singh injured was implicated. In the year 1982 the father of the appellant lodged a report against Mohan Singh son of injured Ram Singh under section 323,504 and 506 IPC. It is, thus evident

that there is party friction in between the parties and, thus, it was contended that the prosecution examined Narendra Singh and Ram Singh who belonged hostile friction of the appellant and he further contended that they are interested witnesses and their evidence can not be relied upon. If the testimony of a witness otherwise inspiring confidence can not be discarded on the ground that being a relation of the injured or he is an interested witness. A close relative who is a very natural witness can not be termed as an interested witness. It is common that a person related to the victim always comes forward to give the evidence in support of the prosecution. On the other hand, it has now almost become a fashion that public is reluctant to appear and depose before the court especially in a criminal cases because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. The are being threatened and they are subjected to lengthy cross-examination. In such a situation only natural witnesses available to the prosecution would be the relative or interested persons. If there are friction in the village the persons who are living in the village do not have the courage to depose against other party because of their threats or more so they have to suffer a lot in the future time. It has become common where a witness remains in different and he

is not inclined to depose because of the prevailing social structures. On the other hand, a person who is interested or related to the injured he will try to prosecute the real culprit by stating the truth. There is no reason why a close person will implicate or depose falsely against somebody as against the real culprit. However, it is a rule of caution that only requirement in the case of the interested witness is that the testimony of the relative or interested witness should be examined cautiously. In the instant case the injured Ram Singh has himself appeared before this court as PW 3 and he had narrated the entire incident. The injured witness is on higher pedestal than an ordinary eye witness. The injured witness sustained the injuries in the scuffle and his presence can not be doubted at the spot. As such, the testimony of the injured person can not be discarded solely on the ground that he was not present at the spot and there are minor variations in his testimony. The evidence of PW 3 Ram Singh is consistent. Nothing could be elicited during the cross-examination and there is no reason to disbelieve the testimony of Ram Singh, the injured. It is also well settled position of law that if the testimony of an injured witness is credible and cogent, the solitary testimony of the injured can be based for the conviction. No corroboration is required in that case. In this case the evidence of Ram Singh is

completely credible and cogent and his evidence does not suffer from any infirmity. In the instant case the evidence of the injured is completely consistent. Minor variations which do not have any effect on the credibility of the evidence can not be the basis to discard the intensive value of the evidence.

17. The learned counsel for the appellant further contended that the incident took place in the village Lunthura and there are many witnesses of the locality who could have been available to the prosecution to narrate the incident. It was further pointed out that Khushal Singh, Mohan Sinhg and Prem Singh had been indicated was witnesses in the FIR but they have not been produced before the court. It is in the evidence as well as in the FIR that when the incident took place Ram Singh was sitting in front of his house alongwith Madan Singh. It is also in the evidence that when the appellant assaulted him by sword he made a cry thereupon the witnesses reached at the spot. Thus, these witnesses are merely of the fact that they had seen the accused with the arms. It is but natural that they have not seen the occurrence, as stated they could have been the witnesses of regestea admissible under section 3 to 8 and 157 of the Indian Evidence Act. The witnesses which have shown in the FIR they are mostly related to the injured. The prosecution in

support of his case examined PW 4 Narendra Singh to support the prosecution version. He has stated in his evidence that he was sitting inside his house when he heard the cry of the injured and he reached at the spot and he saw the injuries on the person of the injured and he also rescued the appellant. The other witness which had been shown in the FIR is of the same fact. The evidence of PW 4 is consistent and credible. Minor variations pointed out by the learned counsel for the defence did not disturb the genesis of the crime. He was stopped to a lengthy cross-examination but nothing could be elicited which disturb the genesis of the story of the prosecution. His evidence is credible and cogent and I am completely in agreement with the findings recorded by the learned trial court. The prosecution is not obliged to examine each and every person who have seen the occurrence or who might be a witness of the fact. It is not the quantity but it is the quality which has to be seen during the evidence. If the evidence of a witness of one fact is credible and cogent the prosecution is not obliged to multiply the said evidence of that fact by producing the other witness. It is not in the evidence that any other person of the village reached at the spot except the persons which had been indicated in the FIR. As I have pointed out in the preceding paragraphs that nobody comes forward to reveal the facts of the case or

to adduce the evidence before the court due to the fear that they would be the victim of the party friction in the village. As such there is sufficient evidence to prove the incident and non-examination of other witnesses would not be a ground to discard the credible testimony of PW 2 and PW 3 which inspires confidence.

18. It was further contended that the FIR was lodged by Madan Singh whose testimony has been disbelieved and whose presence has been doubted by the Sessions Judge as well as by the High Court in another appeal. It was further contended that he had not seen the incident but he had narrated the entire incident in the said FIR. It is very much in the evidence that Mohan Singh went with Ram Singh to the hospital. However, the learned counsel for the defence pointed out that the medical report shows that he was brought by Mohan Singh and the name of Madan Singh had not been mentioned in the medical certificate. It is also in the evidence that Ram Singh and Mohan Singh and other persons were there. Mohan Singh was more close relation that Madan Singh. The name of Mohan Singh who had brought the injured had been written in the medical report and it is also relevant that the doctor would not write all the names who had accompanied the injured. It is obvious that if injured was carrying by the informer he would have come to know how

the incident took place. Thus, I do not find any force in the argument advanced by the learned counsel for the appellant.

19. It was further contended on behalf of the learned counsel for the appellant that the statement of the injured Ram Singh was written by the I.O. after inordinate delay and the statement can not be relied upon. It is true that the statement of injured was recorded after few days. However, the examination given by the I.O. was in variance with the statement of the witnesses. The recording of the statement of the witness only carries confidence about the manner and the participation of the accused and the weapon used in the incident. It is pertinent to mention here that the FIR of the occurrence had already into existence immediately after the incident and there was no other chance of making any addition to the fact narrated in the FIR. The injured has himself narrated the same story in the statement recorded under section 161 Cr.P.C. The delay in recording the statement of the witness in the case does not diminish the prosecution case and his testimony can not be made a rule of rejection of the oral evidence for the latches on the part of the I.O.

20. It was further pointed out that the I.O. had not sent the soil which was taken into possession at the time of the investigation and he had not sent it to the chemical examiner

for chemical anaylsis of the blood. The learned counsel for the appellant further contended that there are omissions in the investigation and it leads to take an inference that the I.O. had not conducted the investigation in the right prospects. He further contended that the I.O. did not make the recovery of the sword. The learned A.G.A. refuted the contentions. It is a well settled position of law that even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective. **(See Dhanaj Singh alias Shera and others Vs State of Punjab 2004 (3) SCC page 654, Chotu Vs State of Maharashtra 1997 CRI.L.J.4394 (SC) and Karnel Singh Vs State of M.P. 1995 CRL.L.J. 4173).**

21. The evidence of PW 3 and PW 4 is further stand corroborated by the medical evidence of PW 1 and PW 2 who had examined the injured immediately after the incident. There is one incised injury on the person of the injured. It was pointed out by the learned counsel for the appellant that the width of the injury was so wide that it can not be an

incised wound. The doctor has opined that the injury was an incised injury in the elbow joint. Dr. G.K.Sharma (PW 2) who medically examined the injured Ram Singh (PW 3) had stated in his evidence that this incised injury might have been caused by some heavy sharp edged weapon. It is also in the prosecution evidence that the injury was caused by the sword and it is also in the evidence that the appellant aimed at the neck of the injured but he warded it off by raising his arm and it hit his dorsum of elbow joint. Dr. G.K.Sharma (PW 2) had stated where the injured sustained the injury, the skin was loose. The width of the injury was not as a result of the impact but it was due to streatch of the loose skin at the dorsum joint. The injury was found bone deep by the doctor and the muscular fibers were cut across resulting in opening of injury. The evidence of the doctor is credible and cogent. As such, the evidence of the doctor further corroborates the evidence of the prosecution. Thus, this alone fact can not be a ground for acquitting the appellant and the contentions of the learned counsel for the appellant has no force. The matter was promptly reported to the police station and the prompt FIR, thus, inspires confidence that it was not the outcome of due consultation. The role of the present appellant has been clearly defined in the said FIR. The prompt FIR also corroborates the factum of the incident.

22. The learned counsel for the appellant further contended that there was no intention on the part of the appellant to cause such a blow which may cause his death. It was further contended that the injuries were not on the vital part of the body, as such, the offence under section 307 is not made out. The learned A.G.a. refuted the contention of the learned counsel for the appellant. To constitute an offence under section 307 IPC, two ingredients of the offence must be proved; (i) an intention or knowledge relating to committing of murder (ii) the doing an act towards it. For the purpose of section 307 IPC what is material, is the intention or knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is necessary ingredient of section 307 IPC there can be no offence. Intention which is a state of mind can not be proved by direct evidence. As a fact, it can only be detected or inferred from the other factors. The relevant considerations may be the nature of weapon used, the palace where the injuries were inflicted, the nature of the

injuries and the circumstances in which the incident took place. On the evidence on record the prosecution has been able to prove that the injured sustained the injuries by the single sword injury. It was an open area, i.e. the Sahan of the injured where the incident took place. The nature of the injuries sustained by the injured, injury No.1 which was grievous in nature. It is also in the evidence that he sustained the injury on the joint elbow of the arm which is not a vital part of the body. It is also in the evidence that he only attacked once on the person of the injured. The injured was accompanied by Madan Singh according to the prosecution. There is a lack of evidence that the appellant tried to assault him several times and the said assaults were prevented by any of the witnesses. If the intention would have been to kill or to commit the murder he could have repeatedly struck on the person of the injured. The injury is not on the vital part.

23. Taking into consideration the nature of the injuries, the manner in which it was committed and the place where it was committed, it is clear that the intention or knowledge to commit the murder was not present. Thus, the appellant is to be convicted under section 326 IPC instead of section 307 IPC. The sentence of 3 years' R.I. and of fine of Rs.2000/- under section 326 IPC would met the ends of justice.

24. In view of the above discussion I am of the view that the appeal is liable to be partly allowed.

25. The appeal is partly allowed. The appellant is convicted under section 326 IPC instead of Section 307 IPC and is sentenced to 3 (three) years rigorous imprisonment and to pay a fine of Rs. 2000/-. In default of payment of fine the appellant shall further undergo rigorous imprisonment of 3 (three) months.

26. Let the record be sent back to the court concerned for compliance and report to be submitted within two months.

(J.C.S. Rawat, J.)

28.06.2006.
Negi.